State Courts Applying A Cumulative Approach*

California. See *In re Jones*, 917 P.2d 1175, 1193 (Cal. 1996) (concluding that counsel's deficient performance, considered in the aggregate, sufficiently undermined confidence in the outcome of the trial).

Colorado. See *People* v. *Gandiaga*, 70 P.3d 523, 529 (Colo. App. 2003) (recognizing that "prejudice may result from the cumulative impact of multiple attorney errors").

Georgia. See *Schofield* v. *Holsey*, 642 S.E.2d 56, 60 n.1 (Ga. 2007) (concluding that trial counsel's errors should be considered together as one issue under the *Strickland* prejudice prong and disapproving prior cases holding to the contrary).

Illinois. See *People* v. *Foster*, 660 N.E.2d 951, 959-62 (Ill. 1995) (applying cumulative error analysis to ineffective assistance of counsel claims and finding no "cumulative error" and thus no prejudice under *Strickland*).

Indiana. See *Grinstead* v. *State*, 845 N.E.2d 1027, 1036 (Ind. 2006) ("Certainly, the cumulative effect of a number of errors can render counsel's performance ineffective."); *Smith* v. *State*, 547 N.E.2d 817, 819-20 (Ind. 1989) ("In an ineffective assistance of counsel context . . . while each alleged error or omission may be reviewed separately under the substandard performance prong of *Strickland*, we then assess the cumulative prejudice accruing to the accused to see whether the compilation of counsel's errors has rendered the result unreliable, necessitating reversal under *Strickland*'s second prong.").

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* Where a state court of last resort had not opined, we have included relevant intermediate appellate court decisions.

Iowa. See *State* v. *McGee*, 707 N.W.2d 336 (Iowa Ct. App. 2005) (unpublished table decision), *available at* 2005 WL 2508416 (considering "whether the 'errors' cumulatively and in light of the 'totality of the evidence' resulted in prejudice" to the defendant); cf. *Smothers* v. *State*, No. 01-0452, 2002 WL 700959, at *5 (Iowa Ct. App. Apr. 24, 2002) (addressing defendant's claim that "if insufficient individually, the cumulative effect of the errors was so prejudicial that it denied him a fair and impartial trial, as well as effective assistance of counsel. We conclude Smothers received effective assistance of counsel. Accordingly, we find there was no cumulative error.").

Maryland. See *Bowers* v. *State*, 578 A.2d 734, 744 (Md. 1990) (concluding that lower court's decision to review "each charge of deficient performance and consequent prejudice, and to decide that no one charge alone was serious enough to meet both *Strickland* tests" was incorrect and that "[e]ven when individual errors may not be sufficient to cross the threshold, their cumulative effect may be").

New Jersey. See *State* v. *Marshall*, 690 A.2d 1, 88 (N.J. 1997) (holding that defendant could not show that "but for [counsel's] alleged deficiencies, individually and cumulatively, there is a reasonable probability that the result of the trial would have been different").

New Mexico. See *State* v. *Trujillo*, 42 P.3d 814, 828 (N.M. 2002) (stating that the court considers each individual allegation of ineffective assistance as well as their cumulative effect).

New York. See *People* v. *Brown*, 752 N.Y.S.2d 347, 348-49 (N.Y. App. Div. 2002) ("While no single error on counsel's part would constitute ineffective assistance of counsel, the cumulative effect of these

errors deprived the defendant of meaningful representation.").

Ohio. See *State* v. *Gondor*, 860 N.E.2d 77, 90 (Ohio 2006) ("The trial court properly considered the cumulative effect of trial counsels' errors.").

Texas. See *Ex Parte Aguilar*, No. AP-75526, 2007 WL 3208751, at *1 (Tex. Crim. App. Oct. 31, 2007) ("We hold, as we have indicated in the past, that such errors should be considered cumulatively.").

West Virginia. See *State ex rel. Bess* v. *Legursky*, 465 S.E.2d 892, 901 n.10 (W. Va. 1995) ("Even if we were to apply the *Strickland/Miller* analysis that an accused must show that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceedings would have been different, we would reverse this conviction because the Appellant has proven prejudice as a result of the cumulative impact of multiple deficiencies in defense counsel's performance."); *State ex rel. Daniel* v. *Legursky*, 465 S.E.2d 416, 424 n.7 (W. Va. 1995) ("In making the requisite showing of prejudice, 'a petitioner may demonstrate that the cumulative effect of counsel's individual acts or omissions was substantial enough to meet *Strickland*'s test.'") (quoting *Williams* v. *Washington*, 59 F.3d 673, 682 (7th Cir. 1995)).

Wisconsin. See *State* v. *Thiel*, 665 N.W.2d 305, 322 (Wis. 2003) ("Just as a single mistake in an attorney's otherwise commendable representation may be so serious as to impugn the integrity of a proceeding, the cumulative effect of several deficient acts or omissions may, in certain instances, also undermine a reviewing court's confidence in the outcome of a proceeding. Therefore, in determining whether a defendant has been prejudiced as a result of counsel's

deficient performance, we may aggregate the effects of multiple incidents of deficient performance in determining whether the overall impact of the deficiencies satisfied the standard for a new trial under *Strickland*.").